

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD FRANCIS WROBLEWSKI, JR.,

Defendant-Appellant.

UNPUBLISHED

April 26, 2007

No. 267946

Kent Circuit Court

LC No. 04-001781-FH

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

MEMORANDUM.

Defendant was convicted by a jury of operating a motor vehicle while intoxicated, third offense, MCL 257.625, and operating a motor vehicle while his license was suspended or revoked, second or subsequent offense, MCL 257.904. He was sentenced as an habitual offender, third offense, MCL 769.11, to five years' probation, with the first six months to be served in jail. He appeals as of right. We affirm.

Defendant's only issue on appeal is that the trial court erred by admitting the results of a blood-alcohol test. Defendant was involved in an automobile accident at approximately 6:00 p.m., but left the scene. He was arrested approximately one hour later. A search warrant was obtained for defendant's blood, but the blood was not drawn until approximately 10:15 p.m. Defendant argues that the lapse of time before his blood was drawn precluded the admissibility of the test results. We disagree.

In *People v Wager*, 460 Mich 118, 121-124; 594 NW2d 487 (1999), our Supreme Court overruled prior decisions of this Court¹ which had required that blood-alcohol tests be administered within a reasonable time after an arrest as a prerequisite to admissibility. The *Wager* Court concluded that because none of the relevant statutes concerning the admissibility of blood-alcohol tests included time as an element for admissibility, this Court had erred in imposing such a foundational requirement. Thus, the Court held that "[t]o the extent that the passage of time reduces the probative value of the test, the diminution goes to weight, not admissibility, and is for the parties to argue before the finder of fact." *Id.* at 126.

¹ See, e.g., *People v Schwab*, 173 Mich App 101, 103-104; 433 NW2d 824 (1988); *People v Kozar*, 54 Mich App 503, 508; 221 NW2d 170 (1974).

Although the delay in this case was almost twice as long as the delay in *Wager*, that decision clearly indicates that the length of time between an arrest and a blood-alcohol test is a matter affecting only the weight, not the admissibility, of the test results. Therefore, the trial court properly denied defendant's request to exclude the blood-alcohol test results because of the alleged delay in administering the test.

Moreover, although defendant could challenge the admissibility of this evidence under MRE 403, see *People v Campbell*, 236 Mich App 490, 506; 601 NW2d 114 (1999), he does not offer any argument explaining why the evidence should have been excluded under MRE 403. Under *Wager*, the delay in administering the test is alone insufficient to bar admission of this evidence.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood